

**State of New Mexico**  
**LEGISLATIVE EDUCATION STUDY COMMITTEE**

**REPRESENTATIVES**

Rick Miera, Chair  
Roberto "Bobby" J. Gonzales  
Jimmie C. Hall  
Mimi Stewart  
Thomas E. Swisstack  
W. C. "Dub" Williams

State Capitol North, 325 Don Gaspar, Suite 200  
Santa Fe, New Mexico 87501  
PH: (505) 986-4591 FAX: (505) 986-4338  
<http://lesc.nmlegis.gov>



**SENATORS**

Cynthia Nava, Vice Chair  
Vernon D. Asbill  
Mary Jane M. Garcia  
Gay G. Kernan

**ADVISORY**

Andrew J. Barreras  
Ray Begaye  
Nathan P. Cote  
Nora Espinoza  
Mary Helen Garcia  
Thomas A. Garcia  
Dianne Miller Hamilton  
John A. Heaton  
Sheryl M. Williams Stapleton  
Jim R. Trujillo  
Teresa A. Zanetti

**ADVISORY**

Mark Boitano  
Carlos R. Cisneros  
Dianna J. Duran  
Lynda M. Lovejoy  
Howie C. Morales  
John Pinto  
William E. Sharer

Frances R. Maestas, Director

December 18, 2008

**MEMORANDUM**

**TO:** Legislative Education Study Committee

**FR:** Peter B. van Moorsel *PvM*

**RE: STAFF REPORT: REVIEW OF PROPOSED PUBLIC SCHOOL FUNDING  
FORMULA: GIFTED EDUCATION SURVEY**

During the 2008 interim, the Legislative Education Study Committee (LESC) conducted a thorough examination of the potential impact on student outcomes of the new public school funding formula that was proposed during the 2008 legislative session. During discussions regarding the potential impact of the new funding formula, parents and teachers of gifted children expressed their concern about the way that the proposed funding formula would affect funding for gifted programs. In response to these concerns, the Chairman directed LESC staff to solicit comments and suggestions regarding the provision of programs for gifted students, and to compile this input for use by the committee in its consideration of the proposed formula.

In response to the Chairman's directive, LESC staff drafted a memorandum that included a brief history of the Funding Formula Study Task Force; the attached comparison of current statute and the draft legislation endorsed by the Public School Funding Formula Task Force and the LESC; and a selection of questions regarding the provision of gifted programs. The memorandum was sent to the members of the following three organizations:

- the New Mexico Association for the Gifted;
- the Albuquerque Association for Gifted and Talented Students; and
- the Roswell Association for Gifted Students.

LESC staff received over 80 responses to the memorandum from administrators, teachers and parents of gifted students, and from students themselves. While many answered the questions in the memo, other respondents wrote to express their concern for and satisfaction with gifted education programs in New Mexico. The responses to each of the four questions are summarized below (original questions in bold):

- 1. HB 241 requires that, based on student demographics, school districts and charter schools must offer educational programming for “gifted education, advanced placement and honors programs.” Is this provision specific enough to ensure that the needs of gifted students will be met? If not, please explain why not and suggest alternative language.**

Respondents did not feel that the above provision was specific enough to ensure that the needs of gifted students are met, and provided the following arguments and concerns:

- Gifted students should be defined as students in need of special education because they, like special education students, learn differently and have emotional and social issues that cannot be addressed without specially designed services provided by trained professionals.
- Once identified, gifted students require the creation of an Individualized Education Plan (IEP) that stipulates how the needs of the student will be met through individualized services. Respondents also felt that the IEP was important because it would give parents legal recourse in the event that their children’s needs are being not met.
- Without inclusion of gifted education programs under the special education “umbrella,” the discretionary nature of funding to schools would lead to a decrease in funding for gifted programs, and as a result, the needs of gifted students would not be met.
- Gifted education should not be included with Advanced Placement and honors programs because gifted students require services, not programs. Respondents also noted that although students may choose to participate in Advanced Placement and honors programs, they are not able to choose to be gifted.

The respondents provided various examples of alternate language to address their concerns, including:

- continuing to include gifted students in the definition of a student in need of special education;
  - requiring the development of an IEP or a similar document for students identified as gifted to ensure that these students receive appropriate and adequate services to meet their needs, and to give parents legal recourse in the event that their children’s needs are being not met;
  - requiring that the Educational Plan for Student Success (EPSS) include “educational services,” rather than “educational programs” for students identified as gifted; and
  - specifying that gifted services be provided in the following specific areas: academics (reading, writing, math, social studies, and/or science), creativity and divergent thinking, problem solving, and critical thinking.
- 2. HB 241 includes the same procedures for identifying students as gifted as does current statute. Are these provisions, as implemented through Public Education Department rule, sufficient to ensure that students will be properly identified as gifted? If not, please explain why not and suggest alternative language.**

Generally, the respondents felt that the process for identification of gifted students was sufficient. However, one respondent did not find that the current procedures were adequate; and stated that in New Mexico there is considerable disproportionality in the identification of gifted students. The respondent stated that there is significant underidentification of gifted students who are culturally or linguistically different from the norm, socio-economically disadvantaged, or disabled.

Respondents also expressed concern that, even once they are identified as gifted, students would not receive adequate services because an IEP would no longer be developed.

Respondents were also concerned that, without funding tied directly to the identification of gifted students, school districts would not have an incentive to identify them and provide them with appropriate services.

**3. Do you believe that the EPSS is the appropriate mechanism to tie together budget approval and program delivery, including delivery of programs for gifted students? If not, please explain why not and suggest an alternative means of ensuring accountability?**

Respondents answered the third question in terms of the EPSS' ability to ensure that the needs of gifted students are met. Respondents did not feel that the EPSS would be the appropriate tool to tie together budget approval and program delivery, for the following reasons:

- the EPSS can vary widely from district to district, as well as within a district due to a change in administration. As a result, the respondents argued, provision of services to gifted students would not be uniform statewide;
- respondents questioned whether PED had the resources to effectively monitor each district's and charter school's EPSS, and were concerned that the department, via the EPSS, could not guarantee that adequate services are provided to all gifted students; and
- without an accountability tool that can be more specific than the EPSS, gifted education programs would have to compete at the local level for resources with all other educational programs. This could lead to gifted programs being inadequately funded, or disappearing altogether.

Respondents felt that, in addition to the EPSS, the delivery of programs and services for gifted students should be subject to an accountability system similar to that required for students with disabilities through the federal *Individuals with Disabilities Education Act* (IDEA) and the PED Special Education Bureau.

**4. Please feel free to identify any other issues that have not been addressed in these questions that you feel the committee should be aware of.**

Although individual responses varied, the respondents to the fourth question expressed their appreciation for the positive changes that gifted education programs have made in the lives of their children and/or students. Respondents also repeated their concern that, as a result of the changes made in the proposed funding formula legislation, school districts would cease to provide adequate funding to gifted education programs, and as a result, gifted education programs would fail to provide adequate gifted education services, or cease to exist entirely.

## ATTACHMENT

Current Statute	Draft Legislation (HB 241, as amended)
<b><i>Definitions</i></b>	
<p>A. "special education" means the provision of services additional to, supplementary to or different from those provided in the regular school program by a systematic modification and adaptation of instructional techniques, materials and equipment to meet the needs of exceptional children;</p> <p>B. "exceptional children" means school-age persons whose abilities render regular services of the public school to be inconsistent with their educational needs;</p> <p>C. "children with disabilities" means those children who are classified as developmentally disabled according to the Developmental Disabilities Act [28-16A-1 NMSA 1978]; and</p>	<p>CC. "special education" means the provision of services additional to, supplementary to or different from those provided in the general school program of a public school to students who are required by the federal <i>Individuals with Disabilities Education Act</i> to have an individualized education program, and including developmentally disabled three- and four-year-old children attending public school (Section 2, p. 8)</p>
<p>D. "gifted child" means a school-age person who is determined to be gifted pursuant to Section 22-13-6.1 NMSA 1978 and standards adopted by the state board [department] pursuant to that section.... (Section 22-13-6 NMSA 1978)</p>	<p>No corresponding language.</p>
<b><i>Gifted Children/Students; Determination (Differences are underlined.)</i></b>	
<p>A. The department shall adopt standards pertaining to the determination of who is a gifted <u>child</u> and shall publish those standards as part of the educational standards for New Mexico schools.</p>	<p>A. The department shall adopt standards pertaining to the determination of who is a gifted <u>student</u> and shall publish those standards as part of the educational standards for New Mexico schools.</p>
<p>B. In adopting standards to determine who is a gifted <u>child</u>, the department shall provide for the evaluation of selected <u>school-age children</u> by multidisciplinary teams from each child's school district. That team shall be vested with the authority to designate a <u>child</u> as gifted. The team shall consider information regarding a <u>child's</u> cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also shall consider any disabling condition in the identification,</p>	<p>B. In adopting standards to determine who is a gifted <u>student</u>, the department shall provide for the evaluation of selected <u>students</u> by multidisciplinary teams from each student's school district. That team shall be vested with the authority to designate a <u>student</u> as gifted. The team shall consider information regarding a <u>student's</u> cultural and linguistic background and socioeconomic background in the identification, referral and evaluation process. The team also shall consider any disabling condition in the identification,</p>

<b>Current Statute</b>	<b>Draft Legislation (HB 241, as amended)</b>
referral and evaluation process.	referral and evaluation process.
<p>C. Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single districtwide advisory committee. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee shall regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.</p>	<p>C. Each school district offering a gifted education program shall create one or more advisory committees of parents, community members, students and school staff members. The school district may create as many advisory committees as there are high schools in the district or may create a single districtwide advisory committee. The membership of each advisory committee shall reflect the cultural diversity of the enrollment of the school district or the schools the committee advises. The advisory committee shall regularly review the goals and priorities of the gifted program, including the operational plans for student identification, evaluation, placement and service delivery and shall demonstrate support for the gifted program.</p>
<p>D. In determining whether a <u>child</u> is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the <u>child's</u>:</p> <ul style="list-style-type: none"> <li>(1) creativity or divergent-thinking ability;</li> <li>(2) critical-thinking or problem-solving ability;</li> <li>(3) intelligence; and</li> <li>(4) achievement.</li> </ul> <p>(Section 22-13-6.1 NMSA 1978)</p>	<p>D. In determining whether a <u>student</u> is gifted, the multidisciplinary team shall consider diagnostic or other evidence of the <u>student's</u>:</p> <ul style="list-style-type: none"> <li>(1) creativity or divergent-thinking ability;</li> <li>(2) critical-thinking or problem-solving ability;</li> <li>(3) intelligence; and</li> <li>(4) achievement.</li> </ul>
<p>...Nothing in this section shall preclude a school district from offering additional <u>gifted</u> programs for students who fail to meet the eligibility criteria; <u>however, the state shall only provide state funds for department of education approved gifted programs for those students who meet the established criteria.</u></p> <p>(Section 22-13-6(D) NMSA 1978)</p>	<p>E. Nothing in this section shall preclude a school district from offering additional programs for students who fail to meet the eligibility criteria <u>for gifted students.</u></p> <p>(Section 24, pp. 63-64)</p>